

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRM-M-7742 of 2017 (O&M)
Date of Decision: May 15, 2020

Devinder Singh

...Petitioner

Versus

Joginder Kaur

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ashok Giri, Advocate
for the petitioner.

Mr. Avnish Mittal, Advocate with
Ms. Aparna Singhal, Advocate
for the respondent.

JAISHREE THAKUR, J.

1. Challenge in the instant petition has been laid to the order dated 10.02.2015 passed by the trial court, Jalandhar whereby, maintenance has been allowed to the respondent-wife @ ₹ 8000/- per month from the date of the application (i.e. 20.07.2009), apart from providing ₹ 5000/- per month for the rental accommodation, as well as to the order dated 08.02.2017 passed by the Appellate Court, dismissing the appeal.

2. Brief facts as stated are that a marriage was solemnized between the parties on 20.05.1979, out of which wedlock one daughter and one son were born. The daughter has since been married and the son is residing with the petitioner-husband. The said marriage could not survive the test of time, resultantly, the respondent-wife filed a petition under

Section 125 of Code of Criminal Procedure (for short 'Cr.P.C.') for grant of maintenance against the petitioner-husband on 27.03.2009 at Chandigarh, which petition came to be allowed 21.10.2014 by the Judicial Magistrate Ist Class, Chandigarh. The respondent-wife had been allowed maintenance @ ₹ 8000/- per month from the date of the order and from the date of the application till the date of the order, the respondent-wife had been allowed interim maintenance @ ₹ 2500/- per month, apart from litigation expenses of ₹ 15,000/-. The said order passed by the JMIC, Chandigarh under Section 125 Cr.P.C. was challenged by both the parties by filing their respective revisions, however, both the revisions came to be dismissed by the Judge Special Court, Chandigarh on 11.03.2016.

3. After the filing of the said petition under Section 125 Cr.P.C., the respondent-wife also filed an application under Section 12 of Protection of Women from Domestic Violence Act at Jalandhar (for short 'D.V. Act') against the petitioner-husband on 20.07.2019, which application came to be allowed by the Judicial Magistrate Ist Class, Jalandhar on 10.02.2015. The JMIC, Jalandhar took note of the maintenance amount of ₹8000/- per month already allowed by the JMIC, Chandigarh in proceedings under Section 125 Cr.P.C. and allowed the said amount to the respondent-wife from the date of the application (as moved under the DV Act), apart from litigation expenses of ₹ 11,000/-. However, liberty had been given to the petitioner-husband to pay the said amount either in the petition filed under the D.V. Act or lieu of the order passed by the JMIC, Chandigarh. Besides this, the petitioner-husband was also directed to provide rented accommodation to the respondent-wife at Chandigarh, up to the extent of ₹ 5000/- per month,

within two months from the date of the said order. The said order passed under the DV Act was challenged by the petitioner-husband in appeal, however, the appeal came to be dismissed by the Addl. Sessions Judge, Jalandhar. Now, both the said orders passed by the courts below under the DV Act have been challenged in this petition by the petitioner-husband.

4. Learned counsel appearing on behalf of the petitioner-husband would argue that in the petition filed by the respondent-wife under Section 125 Cr.P.C., the JMIC, Chandigarh had allowed interim maintenance @ ₹2500/- per month from the date of the application (i.e. 27.03.2009) and @ ₹8000/- per month from the date of the order i.e. 21.10.2014, for her residence, medicines, food, clothing and other day-to-day necessities. It is contended that the JMIC, Jalandhar, while allowing the application filed under Section 12 of the D.V. Act, has allowed the maintenance @ ₹ 8000/- per month (as allowed by the JMIC, Chandigarh under Section 125 Cr.P.C.) from the date of the application i.e. 20.07.2009, which finding is illegal and is liable to be set aside. It is pointed out that the petitioner-husband has already paid interim maintenance @ ₹ 2500/- per month to the respondent-wife w.e.f. 27.03.2009 i.e. the petition filed under Section 125 Cr.P.C. and is regularly paying maintenance @ ₹8000/- per month from the date of the order passed under Section 125 Cr.P.C. i.e. 21.10.2014. It is argued that despite the fact that the petitioner-husband is already making the said payment under Section 125 Cr.P.C., the JMIC, Jalandhar has directed the petitioner-husband to pay maintenance @ ₹ 8000/- per month w.e.f. 20.07.2009 i.e. the application filed under Section 12 of the D.V. Act, which finding is illegal. It is also argued that the JMIC, Jalandhar, has also allowed

a sum of ₹ 5000/- per month for the rental accommodation whereas, the maintenance, as allowed to the respondent-wife @ ₹ 8000/- per month under Section 125 Cr.P.C. is inclusive of her residence, medicines, food, clothing and other day-to-day necessities, however, the JMIC, Jalandhar as well as the Appellate Court have failed to appreciate the said fact.

5. Per contra, learned counsel appearing on behalf of the respondent-wife would argue that both the courts below have rightly granted the relief to the respondent-wife under the D.V. Act. It is contended that mere passing of an order under Section 125 Cr.P.C. did not preclude the respondent-wife from seeking appropriate reliefs under the D.V. Act, as both are independent proceedings. In support of his arguments, learned counsel relied upon judgments rendered in *Anita Dashrath Dolare vs. Dashrath Mahadev Dolare and others*, 2019(4) Bom.C.R. (Cri) 509, *Surekha Nanaso Jagtap vs. Dhanaji Jalindar Jagtap and others*, 2019 ALL MR (Cri) 4498, *Sikakollu Chandramohan vs. Sikakollu Saraswathi Devi and another*, 2010(21) RCR (Criminal) 802, *Shome Nikhil Danani vs. Tanya Banon Danani*, 2019(4) AD (Delhi) 497, *Mamta Gautam Wankhede vs. Gautam Sukhdev Wankhede*, 2018 ALL MR (Cri) 3093 and *B. Parkash vs. Deepa and another*, 2016(1) RCR (Criminal) 524.

6. I have heard learned counsel for the parties, apart from perusing the record with their valuable assistance.

7. The marriage between the parties is not in dispute. Before proceeding further, this court would like to first note the undisputed fact that maintenance that has been allowed to the respondent-wife under both the proceedings.

Section 125 Cr.P.C.

This petition was filed on 27.03.2009 and allowed on 21.10.2014 by the JMIC, Chandigarh. Revisions filed by both the parties against the said order already stood dismissed.

Interim maintenance @ ₹ 2500/- per month from the date of the filing of the petition till the date of order and from on 21.10.2014 i.e. the date of order @ ₹8000/- per month has been allowed to the respondent-wife.

Section 12 of D.V. Act

This application was filed on 20.07.2009 and allowed on 10.02.2015 by the JMIC, Jalandhar. Appeal filed by the petitioner-husband against the said order stands dismissed giving rise to the present proceedings in the high Court.

Maintenance @ ₹ 8000/- per month from the date of filing of the application, apart from a sum of ₹ 5000/- per month for the rental accommodation within a period of two months from the date of the order has been allowed to the respondent-wife.

8. It is settled proposition of law that proceedings initiated under the D.V. Act and Section 125 Cr.P.C. are independent and separate proceedings are maintainable, having a different scope. The scope under the D.V. Act is much wider than that of Section 125 Cr.P.C., as provisions of Section 125 Cr.P.C., talks only of maintenance, whereas provisions of D.V. Act provides payment of monetary relief to meet the expenses incurred and losses suffered as a result of domestic violence, including the loss of earning, medical expenses, loss caused due to removal of any property from the possession of aggrieved person. Besides this, the definition as provided

under the D.V. Act also includes physical abuse, sexual abuse, verbal and emotional abuse and also the economic abuse. Moreover, Section 20(1(d) of the D.V. Act clearly provides that the Magistrate may direct the respondent to pay maintenance to the aggrieved person, if any, *including an order under or in addition to an order of maintenance under Section 125 Cr.P.C.*

9. In the petition filed under Section 125 Cr.P.C., which was filed on 27.03.2009 and allowed on 21.10.2014, in para 15 of its order, the JMIC, Chandigarh has taken note of the fact that vide order dated 01.12.2009, the interim maintenance to the tune of ₹ 2500/- per month was allowed to the respondent-wife from the date of the application, after taking into account the pension of the petitioner-husband as ₹13,500/- per month. However, the court had allowed an increase of the interim maintenance as the pension had been increased to 21,063/-. Consequently JMIC Jalandhar fixed an amount of ₹ 8000/- per month as maintenance payable **from the date of the order i.e 21.10.2014.**

10. Whereas, in the application filed under Section 12 of D.V. Act, which was filed on 20.07.2009 and allowed on 10.02.2015, in para 19 of its order, the JMIC, Jalandhar has taken note of the fact that the pension of the petitioner-husband has been increased to ₹23,000/- per month, as per his cross-examination conducted on 10.11.2014/13.01.2015. In para 20 of its order, the JMIC, Jalandhar had taken note of maintenance of ₹8000/- per month, as allowed by the JMIC, Chandigarh under Section 125 Cr.P.C. to the respondent-wife and considering the said amount to be sufficient for her monthly maintenance, had allowed the said amount as maintenance to the respondent-wife from the date of filing of the application, with a liberty to

the petitioner-husband to pay the said amount in the application filed under the D.V. Act or in lieu of order passed by the JMIC, Chandigarh. Apart from this, the JMIC, Jalandhar has also directed that the petitioner-husband would pay a sum of ₹ 5000/- per month to the respondent-wife for her rental accommodation.

11. The factual position is that in terms of order dated 01.12.2009 as passed under Section 125 Cr.P.C., interim maintenance was allowed to the respondent-wife @ ₹ 2500/- per month from 27.03.2009 to 21.10.2014 taking into account the amount of pension of the petitioner-husband as ₹ 13,500/- per month and w.e.f. 21.10.2014, she was allowed maintenance @ ₹ 8000/- per month, considering the amount of pension of the petitioner-husband as ₹ 21,063/-. On the other hand, in proceedings subsequently initiated under the D.V. Act, she had been allowed maintenance of ₹ 8000/- per month, as fixed by the JMIC, Chandigarh by its final order dated 21.10.2014, w.e.f. 20.07.2009 i.e. the date of filing of the application under the D.V. Act. This court is of the considered opinion in the year 2009, as observed by the JMIC, Chandigarh, the pension, which the petitioner-husband was getting was ₹13,500/- per month, out of which he had already paid ₹ 2500/- per month towards interim maintenance and now under the D.V. Act, the petitioner-husband has been directed to make the payment of ₹ 8000/- per month w.e.f. 20.07.2009, while the petitioner-husband was only getting the pension of ₹13,500/- in the year 2009. Besides this, under the D.V. Act, the petitioner-husband has also been directed to make the payment of ₹ 5000/- per month to the respondent-wife within two months from the order i.e. from 10.02.2015. No doubt the proceedings initiated

under Section 125 Cr.P.C. and under the D.V. Act are independent, however, while fixing the maintenance to the wife, earning capacity of the husband has to be seen as well. Though the JMIC, Jalandhar has made it clear that the petitioner-husband is at liberty to pay the said amount of ₹ 8000/- per month either under the D.V. Act or in lieu of the order passed by the learned court at Chandigarh, but the JMIC, Jalandhar had not considered the fact that at the time of filing of the application under the D.V. Act on 20.07.2009, the petitioner-husband was getting the pension of ₹ 13,500/-, out of which amount he had been paying ₹ 2500/- per month as interim maintenance under Section 125 Cr.P.C., and thus would be liable to pay maintenance of ₹8000/- per month, out of ₹13,500/- per month, which in fact is held to be excessive.

12. This court cannot lose sight of the fact that the order passed under Section 125 Cr.P.C. by the JMIC, Chandigarh has attained finality, as the revisions filed by both the parties against the said order had been dismissed by the Judge Special Court, Chandigarh on 11.03.2016 and the said order passed by the Judge Special Judge, Chandigarh has never been challenged by any of the party, as stated by counsel for the parties during the course of arguments. It is only the order passed under the D.V. Act that has been assailed.

13. In view of the above factual matrixes, the order passed by the JMIC, Jalandhar, allowing maintenance @ ₹ 8000/- per month under the provisions of DV Act from the date of the application is not sustainable and the same is liable to be set aside to that extent. Accordingly, the instant petition is allowed and the impugned order passed by the courts below

under the D.V. Act are hereby set aside to the extent that the petitioner-husband is liable to pay the amount of maintenance @ ₹ 8000/- per month from the date of the order passed by the JMJC, Jalandhar i.e. 10.02.2015. It is further clarified that the petitioner-husband is at liberty to pay the said amount either in the terms of the order under Section 125 Cr.P.C. or under the D.V. Act.

14. The respondent is also seeking the payment of an amount towards her rental accommodation, for which she is entitled under the DV Act. The prayer is reasonable, as the respondent-wife is residing separately from the petitioner-husband in a rented accommodation at Chandigarh. The affidavit furnished by the respondent-wife before this court on 24.02.2020 to this effect also corroborates the stand of the respondent-wife that she is residing separately from her parents. The court has allowed a sum of ₹ 5000/- per month for the rental accommodation of the respondent-wife which would be payable from the date the application was filed. The same is excessive, as on the date of the application the petitioner was having a pension of only ₹13,500/- per month as noticed above. It is only on revision of the pension that it was increased to ₹23,000/- per month. As the petitioner who is drawing a pension of ₹23,000 per month has already been directed to pay ₹8000/- per month towards maintenance (be it under the DV Act or under Section 125 Cr.P.C) an additional amount of ₹5000/- towards rent would mean he is paying a total of ₹13,000/- out of ₹23,000, which is more than 50% what he gets. No doubt, the petitioner being the husband is duty bound to maintain his wife and allow her to live life with dignity according to their social status and strata, as held in ***Bhuwan Mohan Singh***

v. Meena, (2015) 6 SCC 353, but it has to be within his means. The amount of ₹ 5000/- towards rent is highly excessive and is being reduced to ₹ 1000/- per month which would be payable in terms of the order passed by the JMIC, Jalandhar.

15. In view of the above discussion, the instant petition stands partly allowed in the aforesaid terms.

May 15, 2020
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable Yes/No